



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

JAN 14 2013

PEP-ENVIRONMENTAL COMPLIANCE MEMORANDUM NO. ECM13-2

To: Heads of Bureaus and Offices

From: Willie R. Taylor, Director
Office of Environmental Policy and Compliance

Subject: Central Hazardous Materials Fund Financial Management Guidance

The Office of Environmental Policy and Compliance (OEPC) is issuing this Environmental Compliance Memorandum under the authority provided by 381 Departmental Manual Chapter 4.SB to convey instructions and guidance through the Environmental Memoranda Series. This ECM establishes guidance in the use and management of Central Hazardous Material Funds (CHF).

The OEPC administers and manages the CHF. Administrative responsibilities include financial management of the CHF, collection from potentially responsible parties at CHF sites, and the maintenance of internal controls to ensure the CHF Program's objectives are met.

The guidance includes information on roles for financial management of the CHF, authorized uses of funds, reporting responsibilities, budgeting, distribution of funds, reconciling and reporting of expenditures. The guidance has been reviewed by each of the bureau representatives on the CHF's Technical Review Committee (TRC).

The guidance will be effective as of January 18, 2013, and supersedes ECM 12-3 and 09-2. If you have any questions, please contact Ms. Hoover either by email at: courtney_hoover@ios.doi.gov, or phone 202-208-7556.

Attachment

cc: REOs

CENTRAL HAZARDOUS MATERIALS FUND (CHF)

ENVIRONMENTAL COMPLIANCE MEMORANDUM FINANCIAL MANAGEMENT

I. OVERVIEW

The Department of the Interior's (Department's) Central Hazardous Materials Fund (CHF) Program was formally established in 1995 through the "Interior and Related Agencies Appropriations Act" (1995 and subsequent years) (Public Law 108-7). In establishing the CHF, Congress mandated that funds appropriated to the CHF are to be used for costs incurred by the Department and any of its component offices and bureaus for response actions conducted pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. Response actions conducted pursuant to CERCLA are further subject to regulatory requirements codified in the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR Part 300). The CHF functions as a source of no-year funding for CERCLA cleanup projects and as a repository for funds recovered pursuant to CERCLA enforcement efforts.

The Office of Environmental Policy and Compliance (OEPC) manages the CHF. Administrative responsibilities include financial management of the CHF and the maintenance of internal controls to ensure the CHF Program's objectives are met.

This guidance provides information on the general financial management of the CHF, including roles and responsibilities, distribution of funds, authorized use of funds, and internal controls.

CHF Objective

The objective of the CHF is to provide a no-year funding source for response actions undertaken pursuant to CERCLA and the NCP addressing the release or substantial threat of release of hazardous substances, or pollutants or contaminants, on land under the Department's jurisdiction, custody or control. The CHF Program also provides policy and guidance to bureaus on the use of the fund to conduct CERCLA response actions. This guidance provides instructions for collecting and managing financial data necessary to develop successful cost recovery claims.

Authorized Use of CHF Funds

The expenditure of CHF funds is limited to response action, and associated activities, undertaken pursuant to CERCLA to respond to the release or threatened release of hazardous substances, or pollutants or contaminants, on or from land under the jurisdiction, custody, or control of the Department or any of its offices or bureaus. This includes responding to a release or threatened release that may migrate onto or under Department land from adjacent land. Associated activities for which CHF funds may be used include the Department's development and implementation of the CHF CERCLA program. Response action for which CHF funds are expended shall be conducted in a manner not inconsistent with the NCP. Bureaus may only use

CHF funds to conduct activities authorized by allocations approved by the Deputy Assistant Secretary - Policy and International Affairs. Eligible activities include:

- Oversight of response activities performed by responsible parties pursuant to a CERCLA settlement agreement
- Oversight of response activities performed by other federal or state agencies
- Remedial Investigations/Feasibility Studies
- Engineering Evaluations/Cost Analyses
- Design and implementation of time critical and non-time critical removal actions, and remedial actions
- Preparation of risk assessments, approval memoranda, action memoranda, administrative records, sampling and analysis plans, proposed plans, records of decision, cost documentation packages, and other documents or activities authorized or required by the NCP
- Operation and maintenance, and monitoring of removal actions, remedial actions, and institutional controls, recommended by the TRC and approved by the Deputy Assistant Secretary - Policy and International Affairs.
- Site-specific project management associated with oversight of remedial or removal activities
- Five-Year reviews
- Preparation and participation in project-related meetings and presentations
- Project-related enforcement activities Contractor and other technical support specifically related to CERCLA response activities
- Travel associated with project-specific response activities
- Training associated with project-specific response activities
- Bureau expenses for a Department-led internal control review
- Bureau TRC representative travel to attend TRC meetings and Internal Control Reviews
- Oversight of FUDS cleanup activities when conducted by outside parties, (e.g. the Army Corps of Engineers)

CHF funding cannot be used for early phases of the CERCLA process including, for example, a preliminary assessment (PA) or site inspection (SI). In addition, the following activities are **not** appropriate for CHF funding:

- Cleanup of substances not defined as hazardous substances, or pollutants or contaminants under CERCLA, including releases that fall within the petroleum exclusion, solid waste, or other materials that are not CERCLA hazardous substances
- Clean-up of releases not on or from land under the Department's jurisdiction, custody, or control (e.g. releases on private property, property managed by other federal or state agencies, and tribal trust lands) except where such releases may migrate onto or otherwise pose a threat of release on land under the Department's jurisdiction, custody, or control
- Investigations and cleanups on Formerly Used Defense Sites (FUDS) led by the Department

- Conducting environmental compliance assessments, (e.g. RCRA, CWA, etc.)
- Emergency responses
- Natural Resource Damage Assessment and Restoration activities
- Facility maintenance and operations not required to respond to the release or threatened release of a CERCLA hazardous substance, or pollutant or contaminant
- Payments of fines, penalties, settlements, and judgments resolving claims against the Department or its Bureaus
- Conference fees that do not relate directly to the project
- General training that does not directly benefit the project
- Labor costs not directly related to authorized project activities

Bureau representatives and site/project managers should use sound management practices in assessing whether costs should be charged to CHF accounts. Any questions concerning whether CHF funding can be used for a specific activity or material cost should be directed to the agency's TRC representative who will be the liaison to OEPC's CHF Program Coordinator. The CHF Program Coordinator will conduct periodic internal control reviews in close coordination with each TRC representative, to ensure proper use of CHF funds in accordance with the CHF internal control review plan.

II. FUND MANAGEMENT

Proper management of the CHF ensures that resources are used as intended at the CERCLA sites that the Department has identified as its highest priorities for cleanup. By conducting management reviews, limiting funds to site-specific objectives, and reporting fund expenditures, OEPC can ensure accountability to senior management, Congress, and the taxpayer.

Responsibilities:

1. Office of Environmental Policy and Compliance (OEPC):
 - a. Provides policy and guidance for the use of CHF funds and cost recovery
 - b. Manages the CHF appropriated funds
 - c. Manages funds recovered from responsible parties
 - d. Ensures integrity and accountability in expenditures of CHF funds
 - e. Provides support in cost recovery settlements and litigation
 - f. Provides technical assistance to bureaus conducting and overseeing response actions
 - g. Assists in overseeing and reviewing CHF project nomination packages
 - h. Conducts internal control reviews of CHF sites
 - i. Assigns a CHF Program Coordinator as the point of contact for CHF issues
 - j. Chairs the Technical Review Committee
2. Office of the Solicitor (SOL), Environmental Compliance and Response Branch (or Regional SOL Offices as determined by the Solicitor). Duties are to be consistent with delegation of responsibilities detailed in 207DM7:

- a. Advises bureaus and the Department to ensure that response actions are conducted in a manner not inconsistent with CERCLA, the NCP, and Department policy
 - b. Reviews CHF project nomination packages to ensure NCP compliance
 - c. Oversees potentially responsible party (PRP) investigations and the initiation of enforcement activities at CHF-funded sites
 - d. Develops and implements cost recovery/enforcement plans and all other enforcement-related activities for CHF-funded sites
 - e. Represents the bureaus and the Department in negotiating and overseeing compliance with agreements and settlements with PRPs and agreements with other federal, tribal, and state agencies
 - f. Represents the bureaus and the Department in coordinating with the Department of Justice in cost recovery settlement negotiations and litigation
3. Technical Review Committee (TRC):
- a. Provides technical review of CHF project nomination packages and on-going CHF projects; and prioritizes projects for CHF funding
 - b. Provides recommendations to the Deputy Assistant Secretary - Policy and International Affairs regarding allocation of CHF funds among bureaus and offices for designated projects
 - c. Assists in policy and guidance development for the CHF Program
 - d. Coordinates implementation of CHF policy and guidance with representative's bureau
4. Bureau Headquarters TRC Representative:
- a. Coordinates information/data/budget requests between the bureau staff and OEPC
 - b. Provides CHF financial management oversight within their bureau, including the monitoring of budget execution and quarterly status reports
 - c. Ensures that all bureau nominations meet CHF eligibility criteria
 - d. Reviews project nominations for completeness and cost estimate accuracy, and presents, or coordinates presentations at on project nominations for the TRC
 - e. Ensures all bureau CHF projects use the CHF Cost Tracking Application, or equivalent, to provide legally-defensible cost data
 - f. Coordinates, as requested by SOL, with project attorneys on cost recovery/enforcement strategies, development of cost documentation packages, and settlement negotiations at CHF sites
 - g. Provides guidance and oversight to bureau site/project managers for bureau-specific requirements
 - h. Ensures that sound technical approaches are undertaken at each CHF project consistent with bureau and DOI policies and guidance
 - i. Participation in Internal Control Reviews of selected projects within his/her bureau
 - j. Ensures proper distribution of funds from DOI to approved CHF project accounts

5. Site/Project Manager:

- a. Responsible for the implementation and management of response action activities at the CHF site. Develops the response action schedule, cost-to-complete estimates, and ensures appropriate resources are utilized for an efficient, cost effective cleanup
- b. Submits annual project nomination packages to their bureau's TRC representative for consideration on new or on-going projects
- c. Utilizes the bureau's financial management system to track project costs within the bureau's accounting structure
- d. Ensures that bureau project personnel utilize the CHF Cost Tracking Application, or equivalent, to prepare project activity logs, and track travel, contract, and other project-related expenditures to facilitate development of cost recovery claims
- e. Maintains cost documentation indefinitely to support cost recovery efforts
- f. Ensures CHF funds are spent in accordance with CHF guidance and the project nomination package requesting funds. Funds not spent in accordance with the plan may be required to be returned to the CHF

6. Interior Business Center (IBC):

- a. Manages the CHF financial account within the Department's Financial and Business Management System (FBMS), Federal Financial System (FFS), or other equivalent system
- b. Records appropriations and costs recovered into the appropriate CHF parent accounts
- c. Generates financial reports for OEPC

Budgeting

Bureaus must submit annual funding requests for CHF projects to the TRC for review in the form of project nomination packages. CHF project nominations must include cost-to-complete estimates for each project. Estimates should comply with the requirements outlined in the *Nomination Guidance ECM 10-4*. The SOL and bureaus also provide annual estimates of costs expected to be recovered by project. These estimates are due to OEPC's CHF Program Coordinator at the same time that nomination packages are due. The cost-to-complete estimates and the recovered funds estimates provide the basis upon which OEPC calculates future year CHF program budget requests. Bureaus should also provide estimates of costs expected to be avoided under settlement agreements with PRPs upon execution of such agreements, for OEPC records.

Distribution of Funds

The TRC reviews the annual CHF project nomination packages (as well as out of cycle requests such as transfers) and recommends an annual funding amount for eligible projects based on project needs, project prioritization, and effective project management, conformance with NCP requirements and applicable Department guidance, and available funds.

The TRC provides funding recommendations categorized by bureau and project to the Deputy Assistant Secretary - Policy and International Affairs. Upon approval, funds are transferred from the CHF parent account to the bureaus' CHF child accounts as funds are available.

At sites for which settlement agreements provide funding from PRPs, these funds are deposited and maintained in site-specific accounts and in accordance with the terms of the settlement agreement; however, the responsible bureau must still provide a nomination package for the project requesting funds on an annual basis.

Transfer of Funds within Bureaus

A bureau will occasionally request authorization to transfer funds between previously CHF-funded projects. Bureaus may not transfer funding between projects without following the steps outlined in this section. In these circumstances, the bureau must submit a transfer request to OEPC detailing the need for the transfer and use of funds. OEPC can authorize such intra-bureau transfers up to \$100,000 per project annually without the review and recommendation of the TRC. For transfers exceeding \$100,000, the TRC will review and provide a recommendation prior to OEPC acting on the request. Authority to approve intra-bureau transfers rests with the OEPC Director. Notification of all approved transfers will be made to the TRC.

CHF Financial Account Structure

The IBC manages the CHF financial accounts in FBMS. The CHF parent financial account has two subaccounts as defined below:

- CH – Appropriations
- CP – Recovered Funds

Each bureau and office maintains two CHF child accounts: one for appropriated (CH) and one for recovered (CP) funds. CHF funds are transferred from one or both of the parent subaccounts (CH, CP) to the bureaus' child accounts as directed by OEPC upon approval by the Deputy Assistant Secretary - Policy and International Affairs. The Office of Budget manages the transfer of funds from the parent account to the bureaus' child accounts.

Bureaus maintain different project account structures within their financial tracking systems. Each CHF project should be able to distinguish between the type of funding received (CH, CP), and if needed, have two independent project account structures (if the project has received both CH and CP funding) to track available budget and expenditures. Bureaus transfer approved funding amounts from the bureau's CHF child accounts to project-specific accounts to establish a functional budget.

Fiscal Year Specific Funding

At the beginning of Fiscal Year (FY) 2012 the Department began using FY-specific account codes for bureaus and offices utilizing FBMS. The annual codes identify what year the parent CHF account received the funding rather than when the funds were distributed to the bureaus.

This applies to both appropriated and recovered funds. For example, if appropriated funding was received by the CHF parent account in FY 2012 and distributed to a bureau in FY 2013, it would be assigned to the bureau's FY 2012 CHF appropriations fund code. Also, this funding would show up as carryover in the assigned project(s)' account instead of new budget authority. In this example, the project would charge to the FY 2012 account for the work that is completed in FY 2013. Deobligated funds should be returned to their original FY specific account. *FY-specific accounts remain available for use until all funds are expended.*

Bureaus are not authorized to move funding between FY-specific accounts. If projects are identified as having negative balances resulting from over charging a FY code, the charges will need to be reassigned to FY-specific accounts with available funds. *Funding must remain in its FY-specific account, and not be reassigned to other FY-specific accounts to resolve negative balances.*

FY account codes require a higher degree of oversight to ensure that projects charge older FY account codes until funds are expended, and then charge newer FY account codes.

III. PROJECT FINANCIAL MANAGEMENT

Bureau management is responsible for ensuring that CHF funds are allocated to the specific project account approved by the Deputy Assistant Secretary – Policy and International Affairs. Project managers and the bureau's TRC representative are responsible for ensuring that funds are spent in accordance with the work proposed in the project nomination package and in a manner not inconsistent with CERCLA and the NCP. Bureaus and OEPC will monitor budget execution by reviewing quarterly reports (*see Reporting below*). Concerns will be reported to OEPC's CHF Program Coordinator, who will coordinate only bureau-specific communication with the appropriate TRC representative.

Reporting

Bureaus that are not utilizing FBMS as their accounting system must report on the status of funding to the CHF Program Coordinator quarterly. The report should detail by project the expenditure by budget object class and amount of available funding. The report should include, at a minimum, the bureau, project site, amount allocated for the year, amount obligated/expended for the quarter by cost element, total amount obligated/expended for the year by cost element, and current available fund balance. Bureaus that are using FBMS do not need to provide these reports, but may be requested to respond to questions identified in OEPC's quarterly reviews. OEPC personnel will access project account information directly from FBMS for the conduct of the quarterly reviews.

Bureaus must also respond to data calls and additional reporting requirements that are requested by other offices within the Department on the execution of CHF funds. Such requests must be routed through the CHF Program Coordinator.

Cost Recovery

Projects must track labor, travel, contract, and expendable costs as outlined in the Environmental Compliance Memorandum (ECM) for Cost Recovery to facilitate cost recovery or cost avoidance efforts, unless granted a waiver from tracking costs for these purposes by OEPC.

Response costs recovered from a PRP must be deposited in the CHF collections account. Funds recovered as reimbursement of past expenses can be applied to other CHF sites. Funds received for future expenses are managed in site-specific accounts established for the applicable site until all response action activities are completed at the site.

INTERNAL CONTROLS

The Office of Management and Budget (OMB) Circular A-11, *Preparation, Submission, and Execution of the Budget*, OMB Circular A-123, *Management and Accountability Controls*, and DOI's "Program Manager's Guide to Risk Management and Internal Controls" require the Department to ensure that administrative and management controls are in place for Department programs. As such, OEPC personnel are required to conduct periodic reviews of CHF projects and bureaus' CHF programs. These reviews will be coordinated with bureau representatives at the beginning of the fiscal year and will comply with the CHF Internal Control Review Plan. The objective of CHF Internal Control Reviews is to ensure that appropriate policies, procedures and applications are available and implemented to meet the CHF program's objectives.

Reviewers assess high risk areas that could affect employees, projects, the program, and/or the public. OEPC submits reports detailing findings and observations identified during reviews to the corresponding bureau's TRC representative. If findings have been identified, the bureau's TRC representative will submit corrective action plans to OEPC within 30 days of being notified of the findings. Corrective action plans include timelines and processes bureaus have developed to remedy findings. Observations are best management practices that do not have to be incorporated in corrective action plans. OEPC reviews the status of open findings on a quarterly basis. OEPC will close findings upon receipt of documentation that findings have been sufficiently addressed to reduce the likelihood of negative impact to employees, the project, the program, and/or the public.

Feedback

OEPC encourages continuous improvement of processes and practices. If you have recommendations to improve the CHF financial management and cost avoidance/recovery process, please provide them to your bureau's TRC representative who will then forward them to the OEPC CHF Program Coordinator.

Appendix – Acronym List

CERCLA - Comprehensive Environmental Response, Compensation and Liability Act of 1980

CHF - Central Hazardous Materials Fund

CH – CHF Appropriations Funds Account

CP – CHF Recoveries from Responsible Parties Account

EO - Executive Order

EPA - Environmental Protection Agency

FBMS - Financial and Business Management System

FUDS – Formerly Used Defense Site

IBC - Interior Business Center

NCP - National Oil and Hazardous Substances Pollution Contingency Plan

OEPC - Office of Environmental Policy and Compliance

OMB - Office of Management and Budget

PA - Preliminary Assessment

PRP - Potentially Responsible Party

RSA - Reimbursable Support Agreement

SI - Site Inspection

SOL - Office of the Solicitor

TA - Travel Authorization

TRC - Technical Review Committee

TV - Travel Voucher